

Office of Personnel Management

§ 553.103

the Washington, DC Oversight Division), Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Puerto Rico, Virgin Islands

OPM SAN FRANCISCO OVERSIGHT DIVISION

120 Howard Street, Room 760, San Francisco, CA 94105-0001

Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, Pacific Ocean Area

OPM WASHINGTON, DC OVERSIGHT DIVISION

1900 E Street NW., Room 7675, Washington, DC 20415-0001

The District of Columbia

In Maryland: the counties of Charles, Montgomery, and Prince George's.

In Virginia: the counties of Arlington, Fairfax, King George, Loudoun, Prince William, and Stafford; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and any overseas area not listed in the service area of another Oversight division.

PART 553—REEMPLOYMENT OF MILITARY AND CIVILIAN RETIREES TO MEET EXCEPTIONAL EMPLOYMENT NEEDS

Subpart A—General Provisions

Sec.

553.101 Applicability.

553.102 Definitions.

553.103 General policy.

Subpart B—Special Provisions for Reemployment Without Penalty To Meet Exceptional Recruiting or Retention Needs

553.201 Requesting OPM approval for reemployment without reduction in individual cases.

553.202 Request for delegation of authority to approve reemployment without reduction in emergencies.

553.203 Status of individuals serving without reduction.

AUTHORITY: 5 U.S.C. 5532, 8344, and 8468.

SOURCE: 56 FR 6206, Feb. 14, 1991, unless otherwise noted.

Subpart A—General Provisions

§ 553.101 Applicability.

This part applies to employment of both civilian annuitants who would be subject to termination of annuity or annuity offset under 5 U.S.C. 8344 or 5 U.S.C. 8468 and former members of the uniformed services who would be sub-

ject to reduction in retired or retainer pay under 5 U.S.C. 5532. Agencies may request exceptions as provided in subpart B from the reemployed annuitant provisions of 5 U.S.C. 8344 (for Civil Service Retirement System annuitants) or 8468 (for Federal Employees Retirement System annuitants), as appropriate, and/or from either or both of the reductions in retired pay required by 5 U.S.C. 5532.

[57 FR 12406, Apr. 10, 1992]

§ 553.102 Definitions.

(a) *Agency*, as used in this part, means an executive agency as defined in 5 U.S.C. 105.

(b) *Annuitant*, as used in this part, refers to a current or former civilian employee who is receiving, or meets the legal requirements and is applying or has announced intention to apply for, an annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, based on his or her service.

(c) *Retiree*, as used in this part refers to either an annuitant as defined in paragraph (b) of this section or a former member of a uniformed service who is receiving retired or retainer pay.

§ 553.103 General policy.

(a) *Agency discretion and responsibility.* The decision to request an exception, or to grant an exception under delegated authority, for any individual under any of the provisions of this part will be at the discretion of the employing agency. A determination made in connection with one position does not require a like determination in connection with any other position. In deciding whether to request an exception or grant an exception under delegated authority, each agency is expected to weigh fiscal responsibility and employee equity and should consider such factors as availability of funds as well as the criteria set out in this part.

(b) *Application of exceptions.* An exception to the reduction in retired pay provisions of 5 U.S.C. 5532 or to the salary offset provisions of 5 U.S.C. 8344 or 8468 authorized by OPM or an agency under this part applies only to the particular individual for whom it was authorized and only while that individual

continues to serve in the same or a successor position. The exception terminates upon the individual's assignment to a different position unless a new exception is authorized under the provisions of this part.

Subpart B—Special Provisions for Reemployment Without Penalty To Meet Exceptional Recruiting or Retention Needs

§ 553.201 Requesting OPM approval for reemployment without reduction in individual cases.

(a) *Request by agency head.* The head of an agency may request OPM to approve individual exceptions on a case-by-case basis to meet temporary emergency hiring needs or when the agency has encountered exceptional difficulty in recruiting or retaining a qualified candidate for a particular position. Authority to submit such a request may not be redelegated to an official below the agency's headquarters level (or, in the case of the Department of Defense, to an official below the headquarters level of the military department or Defense agency).

(b) *Requirements for all requests.* (1) Each request must identify the individual for whom the exception is requested, the appointing authority to be used, and the position to which he or she will be appointed.

(2) The request must be submitted in accordance with the criteria set out in paragraph (c), paragraph (d), or paragraph (e) of this section.

(3) Unless the request is submitted in accordance with paragraph (e) of this section, the individual must be off the agency's rolls before submission.

(4) Unless the request is submitted in accordance with paragraph (c) of this section, or involves employment that is excluded from retirement coverage, a request for continuation of an annuity that would otherwise be terminated under 5 U.S.C. 8344 or 8468 must show that continuation of the annuity would be within the spirit of the applicable law.

(c) *Requests based on an emergency hiring need.* An agency may request reemployment without penalty for an individual whose services are needed on a temporary basis to respond to an emer-

gency involving a direct threat to life or property or other unusual circumstances. Requests submitted on this basis must meet the following criteria:

(1) *Nature of emergency.* Describe the military threat, natural disaster, or other unforeseen occurrence, the date it occurred, and the expected duration of the emergency response effort.

(2) *Need for the individual's services.* The agency must show either that the individual is uniquely qualified for the emergency response work to be done or that the number of positions to be filled and/or urgency of response justifies making the particular appointment without further delay. OPM will not approve reemployment without penalty under 5 U.S.C. 5532, 8344, or 8468 solely to meet normal seasonal workload fluctuations.

(d) *Requests based on severe recruiting difficulty.* Generally, requests for exception will be based on exceptional difficulty in recruiting a qualified candidate for a particular position. Requests submitted on this basis must include a description of the length, breadth, and results of the agency's recruiting efforts for the position and any other factors demonstrating that a legitimate recruiting need cannot be met without the requested waiver. These factors may include, but are not limited to, unusual qualification requirements or working conditions, possibility of job reengineering or contracting, or a need to fill the position without further delay.

(e) *Exceptions based on need to retain a particular individual.* In very rare cases, an exception may be appropriate when an agency needs to retain the services of a particular individual who is uniquely qualified for an ongoing project. Requests submitted on this basis must meet the following criteria:

(1) *Critical nature of project.* The agency must describe the importance of the project to the agency's mission, the potential costs of project failure or delay, legislative or Presidential deadlines, if any, and any other factors demonstrating that the project is unusually critical. Exceptions will not be approved under this paragraph merely to avoid delay in scheduled completion of ongoing work.

(2) *Candidate's unique qualifications.* The agency must describe the knowledges, skills, and abilities possessed by the individual that are essential for successful completion of the project and that could not be acquired by another appointee within a reasonable time.

(3) *Need for retention.* The agency must show good cause to believe that the employee will retire (or, in the case of an individual currently reemployed without an exception, will resign from that position) and that the agency will lose his or her services if the exception is not granted.

(4) *Other staffing options.* While an agency in this situation is not required to conduct outside recruiting, the request for exception must address why the work could not be assigned to other employees involved with the same project.

(f) *Length of exceptions.* OPM may specify a time limit for reemployment without penalty of any individual approved under this subpart. If the agency wishes to continue the exception for an individual beyond the specified time, the request for renewal must demonstrate that the conditions justifying the initial exception still exist.

[56 FR 6206, Feb. 14, 1991, as amended at 57 FR 12406, Apr. 10, 1992]

§ 553.202 Request for delegation of authority to approve reemployment without reduction in emergencies.

(a) *Request by agency head.* The head of an agency may request OPM to delegate to the agency authority to approve individual exceptions on a case-by-case basis in specific circumstances. Authority to submit such a request may not be redelegated to an official below the agency's headquarters level (or, in the case of the Department of Defense, to an official below the headquarters level of the military department or Defense agency).

(b) *Content of request.* The request for delegation must include:

(1) Description of the situations for which authority is requested. The situations must result from emergencies posing immediate and direct threat to life or property or emergencies resulting from other unusual circumstances.

(2) Identification of the occupations, grades, and locations of positions that might be filled under the delegated authority.

(3) Statement of the expected duration of the reemployment to be approved under the requested authority.

(c) *Delegation agreement.* OPM will set out the conditions for use of each authority that it delegates under the provisions of this section in a delegation agreement. The agreement will remain in effect without time limit unless OPM specifies a termination date in the agreement, or unless OPM withdraws the delegated authority upon finding that the circumstances justifying the delegation have changed substantially or that the agency has failed to manage the authority in accordance with the law, the regulations, and the agreement itself.

[56 FR 6206, Feb. 14, 1991, as amended at 57 FR 12406, Apr. 10, 1992]

§ 553.203 Status of individuals serving without reduction.

(a) *Reemployed civilian annuitants.* Annuitants reemployed with full salary and annuity under an exception granted in accordance with this part are not considered employees for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code. They may not elect to have retirement contributions withheld from their pay; they may not use any employment for which an exception is granted as a basis for a supplemental or recomputed annuity; and they may not participate in the Thrift Savings Plan.

(b) *Retired members of the uniformed services.* Except for individuals to whom paragraph (a) of this section is applicable, retired member employed without reduction in retired or retainer pay under this part are considered employees for the purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, subject to the same conditions as apply to any other employees.

[56 FR 6206, Feb. 14, 1991, as amended at 57 FR 12406, Apr. 10, 1992]